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JOHN RICHARD FRATUS,
Plaintiff,
v.
BAPTISTA, et al.,
Defendants.

Case No. 14-cv-02608-JD

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

I. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to

1 relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a
2 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above
3 the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
4 omitted). A complaint must proffer "enough facts to state a claim to relief that is plausible on its
5 face." *Id.* at 570. The United States Supreme Court has explained the "plausible on its face"
6 standard of *Twombly*: "While legal conclusions can provide the framework of a complaint, they
7 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
8 should assume their veracity and then determine whether they plausibly give rise to an entitlement
9 to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by
11 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was
12 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

13 II. LEGAL CLAIMS

14 Plaintiff states that several defendants used excessive force against him while others failed
15 to properly supervise the defendants. The treatment a prisoner receives in prison and the
16 conditions under which he is confined are subject to scrutiny under the Eighth Amendment.
17 *Helling v. McKinney*, 509 U.S. 25, 31 (1993). "After incarceration, only the unnecessary and
18 wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth
19 Amendment." *Whitley v. Albers*, 475 U.S. 312, 319 (1986) (ellipsis in original) (internal quotation
20 and citation omitted). The core judicial inquiry is whether force was applied in a good-faith effort
21 to maintain or restore discipline, or maliciously and sadistically to cause harm. *Whitley*, 475 U.S.
22 at 320-21.

23 Supervisor defendants are entitled to qualified immunity where the allegations against
24 them are simply "bald" or "conclusory" because such allegations do not "plausibly" establish the
25 supervisors' personal involvement in their subordinates' constitutional wrong, *Iqbal*, 556 U.S. at
26 675-84 (noting no vicarious liability under Section 1983 or *Bivens* actions), and unfairly subject
27 the supervisor defendants to the expense of discovery and continued litigation, *Henry A. v.*
28 *Willden*, 678 F.3d 991, 1004 (9th Cir. 2012) (general allegations about supervisors' oversight

1 responsibilities and knowledge of independent reports documenting the challenged conduct failed
2 to state a claim for supervisor liability). So it is insufficient for a plaintiff only to allege that
3 supervisors knew about the constitutional violation and that they generally created policies and
4 procedures that led to the violation, without alleging "a specific policy" or "a specific event"
5 instigated by them that led to the constitutional violations. *Hydrick v. Hunter*, 669 F.3d 937, 942
6 (9th Cir. 2012). Under no circumstances is there respondeat superior liability under section 1983.
7 Or, in layman's terms, under no circumstances is there liability under section 1983 solely because
8 one is responsible for the actions or omissions of another. *See Taylor v. List*, 880 F.2d 1040, 1045
9 (9th Cir. 1989).

10 Plaintiff states that defendants Baptista and Beers sprayed him three or four times with
11 pepper spray for no reason. This is sufficient to proceed as a violation of the Eighth Amendment.
12 The remaining defendants are dismissed with leave to amend. Plaintiff alleges that the other
13 defendants covered up the incident and failed to properly supervise Baptista and Beers. As set
14 forth above, plaintiff must present more than conclusory allegations to state a claim against
15 supervisor defendants. Plaintiff also presents basic allegations of retaliation, but must present
16 more information to state a claim and provide specific details about individual defendants and
17 their actions.

18 CONCLUSION

19 1. The complaint is **DISMISSED** with leave to amend. The amended complaint must
20 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption
21 and civil case number used in this order and the words AMENDED COMPLAINT on the first
22 page. Because an amended complaint completely replaces the original complaint, plaintiff must
23 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
24 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to
25 amend within the designated time will result in the dismissal of all defendants Baptista and Beers
26 and this case will only proceed against them.

27 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
28 Court informed of any change of address by filing a separate paper with the clerk headed "Notice

1 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to
2 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
3 Civil Procedure 41(b).

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5 **IT IS SO ORDERED.**

6 Dated: October 3, 2014

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JAMES DONATO
United States District Judge

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United States District Court
Northern District of California

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4 JOHN RICHARD FRATUS,
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7 BAPTISTA, et al.,
8 Defendants.
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10 Case No. 14-cv-02608-JD
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12 **CERTIFICATE OF SERVICE**
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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 10/3/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John Richard Fratus
V74577
P.O. Box 290066
Represa, CA 95671

Dated: 10/3/2014

Richard W. Wiking
Clerk, United States District Court

By 
LISA K. CLARK, Deputy Clerk to the
Honorable JAMES DONATO